

Media, Race, Crime and the Punishment: Re-Framing Stereotypes in Crime and Human Rights Issues

Rachel Lyon

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Rachel Lyon, *Media, Race, Crime and the Punishment: Re-Framing Stereotypes in Crime and Human Rights Issues*, 58 DePaul L. Rev. 741 (2009)

Available at: <https://via.library.depaul.edu/law-review/vol58/iss3/8>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

MEDIA, RACE, CRIME, AND PUNISHMENT: RE-FRAMING STEREOTYPES IN CRIME AND HUMAN RIGHTS ISSUES

Rachel Lyon*

Foreigners to the United States are usually struck by the harshness of its conflicts between justice and the mass media. . . . [I]t is undeniable that the tension between a sensationalist, commercially motivated press and fair-trial rights in the United States has reached a degree unmatched in the rest of the world¹

INTRODUCTION

In fifteenth century Europe, punishment by death was followed by the presentation of an actual corpse for the public. Sometimes the heads of former enemies were hefted onto pikes; other times mass burnings or beheadings served as the ultimate punishment for those who deviated from what was acceptable. Whether the “enemy” was an individual trying to overthrow a monarch, a religious group such as Protestants or Catholics, or a witch during the Salem witch burnings, those in power have often preserved public order for the community by publicly scapegoating the demonized “other.”² The targeting of “others” has been a continuing element in public punishment in the

* Rachel Lyon is the Chair of Cinema & Television at SMU and an Emmy-Award-winning documentary filmmaker. She is currently producing and directing *Discovering the Etruscans: From the Temple and the Tomb*. Her most recent film, *Juror Number Six*, an international Internet documentary with the Ford Foundation's blackpublicmedia.org's *Masculinity Project*, was recently featured in the AFI Dallas Film Festival. Lyon's documentaries include the acclaimed, *Race to Execution* for PBS's *Independent Lens*, *Mr. Dreyfuss Goes to Washington* for The History Channel, *Shadow Over Tibet* for PBS and the Emmy Award winner, *Men Who Molest*, for PBS's *Frontline*.

Lyon has created over sixty documentaries and three feature films for PBS, NBC, CNN, National Geographic and the History Channel, among others. Her feature films include *Tell Me A Riddle*, based on Tillie Olsen's novella, directed by Oscar winner, Lee Grant, starring Academy Award winners Melvyn Douglas and Lila Kedrova. Ms. Lyon's other features include the restoration of *Orson Welles' Othello*, and *Thousand Pieces of Gold* based on the historical novel by Ruthann Lum McCunn, starring Academy Award winner Chris Cooper and Rosalind Chao. Lyon co-founded Women in Film in San Francisco and Chicago, serving on the Board in four cities.

1. Giorgio Resta, *Trying Cases in the Media: A Comparative Overview*, LAW & CONTEM. PROBS., Autumn 2008, at 31, 31.

2. See generally DEATH AND REPRESENTATION (Sarah Webster Goodwin & Elisabeth Bronfen eds., 1993).

United States, as well. This type of official retribution has often targeted blacks and other minorities, whether in public lynchings or death penalty cases, particularly when the victim is white.

Dramatizing the villains, who must then be prosecuted and punished, has been a big business for print, television, and broadcast news, as well as the newer media of Internet entertainment. These media function as mediators of meanings, powerfully shaping the ways in which people understand our world by organizing information in such a way that the viewer/media participant forms perceptions about good and bad over time. Punishing criminals may involve a media cultivation effect in which viewers are taught to believe that their world is like the television world.³ Television often blames individual differences and personal weaknesses rather than societal attributions for what goes wrong in our culture. Media companies may not intentionally encourage fear in their viewers, but, in fact, fear sells. By conflating crime as something that happens to white victims, usually involving black or dark skinned defendants, the media trains the viewer to hear the same "crime script" again and again. This script communicates that crime is rampant, and it threatens to touch viewers personally. Therefore, viewers' best and only recourse is to "get tough on crime" in whatever ways they can, whether that be as jurors or voters.⁴

My own exploration of the issues of media and human rights, which began with an examination of the death penalty, started close to home. My sister, Andrea Lyon,⁵ was representing Madison Hobley. Hobley was a young medical technician whose wife and young son, along with five other people, were killed in an apartment building blaze in the 1980s. Hobley was arrested on charges of arson and murder, tortured into a false confession, sentenced to death, and was housed on Illinois's death row for sixteen years. Hobley's case inspired me to produce a television documentary on the subject of race and the death penalty, entitled *Race to Execution*.⁶ The film focused on Hobley's story in Chicago, as well as the case of Robert Tarver in Alabama. Our work on this film revealed disturbing research on how the race of the victim, the race of the defendant, and the race and

3. See Daniel Romer, Kathleen Hall Jamieson & Sean Aday, *Television News and the Cultivation of Fear and Crime*, 53 J. COMM. 88 (2003).

4. See Arthur A. Raney, *Punishing Media Criminals and Moral Judgment: The Impact of Enjoyment*, 7 MEDIA PSYCHOL. 145 (2005).

5. Andrea Lyon is a criminal defense attorney and the director of the DePaul University College of Law's Center for Justice in Capital Cases.

6. RACE TO EXECUTION (Rachel Lyon 2007).

gender of jury members determines who lives and who dies in America.

During the production of this documentary, I became intrigued with an underlying factor in our criminal justice system that cropped up consistently—and negatively—in these and other cases: the depth of fear in our culture is propagated by the media. In one of the film's scenes, a local news broadcast from 1987 shows a dazed and frightened Madison Hobley being marched into police headquarters, protesting to the cameras, "It was not me. They have the wrong man." He is fighting the burden of guilt laid on him, not only by the police, but also by the gauntlet of reporters, microphones, and cameras that surround him. News viewers who absorb the media's propagation of fear, imagining themselves as vulnerable to crime, may be the same people who eventually sit in the jury box.

Subsequently, I received funding to produce an Internet documentary specifically exploring the convergence of media, race, crime, and punishment. *Juror Number Six* exposes our "crime-soaked media," one that promotes a culture of fear, based on race and a malfunctioning justice system.⁷ "Crime has been going down for years, and yet it gets reported five, six hundred percent more than it used to be because of the twenty-four hour news cycles and the need to feed that entertainment beast," says death penalty attorney Andrea Lyon in *Juror Number Six*.⁸ According to Lyon, "All the research shows that people who watch local television are more afraid of crime than people who don't."⁹

Juror Number Six examines how today's "24/7" news culture, as well as television dramas such as *CSI* and *Law & Order*, may not necessarily generate, but increase this climate of fear. The following observations are some of what we learned in the course of this exploration. Part II describes the media's representation of crime and its affect on viewers' perception of crime.¹⁰ Next, Part III describes the news coverage of crime and the effects of violence on television.¹¹ Part IV then describes the "O.J. Simpson Effect."¹² Next, Part V de-

7. Internet Documentary: *Juror Number Six* (Rachel Lyon 2009), available at <http://www.blackpublicmedia.org/project/masculinity/media/96> [hereinafter *Juror Number Six*]. An earlier version of *Juror Number Six* was presented at the DePaul Law Review Symposium, *Media, Race & the Death Penalty* (March 6–7, 2008).

8. *Id.*

9. *Id.*

10. See *infra* notes 17–19 and accompanying text.

11. See *infra* notes 20–42 and accompanying text.

12. See *infra* notes 43–50 and accompanying text.

scribes the impact of television crime dramas.¹³ Part VI then describes how the media's representation of crime affects jurors perception of crime and criminal trials.¹⁴ Part VII explores the Internet's impact on the perception of crime.¹⁵ Finally, Part VIII proposes necessary change of how the media frame crime.¹⁶

II. MEDIA, REPRESENTATION, AND PERCEPTION

Although crime has long been a staple in both news and television drama, the media's role in crime and punishment in America, particularly the role of electronic media, has changed dramatically over the past fifteen years. While minority populations have grown, media ownership and management has remained firmly in the grip of an elite white male club. For example, when Richard Parsons—an African American—was named the chairman and CEO of then AOL/Time Warner, his appointment made headlines in major news outlets; he was the first African American to head a Fortune 500 communications conglomerate.¹⁷ Commissioning editors, newsroom executives, and new media specialists make decisions about which stories to cover—and which to leave out—based on the makeup and values of their own communities. In general, these community values reflect the interests of other white professionals. In addition, the need for “good numbers”—that is, high viewership—influences every channel, newspaper, and advertiser to aggressively compete for advertising and viewership within the ever-fragmented media marketplace. This can result in a willingness to show more “low-brow” images, and to “hawk” violence with redoubled vigor.

How the constant presentation of crime and violence to viewers, readers, and “Netizens” (media users and participants on the Internet who are extremely active in a broad range of virtual communities) impacts us individually and within larger communities remains a perplexing and elusive question. In television and print news, far from merely reporting objectively on crime, media companies are now major stakeholders that profit from our carefully cultivated fear of crime. The burgeoning multiple venues, platforms, and programming formats have allowed media producers, distributors, and corporate owners to profit from the tragic epidemic of violence within African American

13. See *infra* notes 51–68 and accompanying text.

14. See *infra* notes 69–70 and accompanying text.

15. See *infra* notes 71–84 and accompanying text.

16. See *infra* notes 85–88 and accompanying text.

17. See Jim Dywer & Seth Schiesel, *New Boss for Media Giant is an Old Hand at New York*, N.Y. TIMES, Dec. 9, 2001, at 1A.

communities. With one out of three African-American men between the ages of eighteen and thirty-five in jail, on parole, or awaiting trial,¹⁸ there are many “dark stories” to exploit. Exacerbating matters, conservative talk shows, which are often the most vocal cultivators of fear, have enjoyed a spike in viewership since the recent inauguration of America’s first African American president.¹⁹

III. CRIME NEWS AND VIOLENCE ON TELEVISION

In the late 1970s, the impact of violence on children in America caused much concern. Numerous studies found that the average child had witnessed over 8000 violent murders on television by the time he or she had left elementary school.²⁰ The implicit theory underlying this examination of the media was that television violence breeds greater violence in our country’s children. The exponential rise in violent crime seemed to fortify this notion.

In the 1990s, under the pressure of Tipper Gore and others, more research focused on the problem of violence in the media. In 1996, Reed Hundt, then Federal Communications Commission Chairman, stated:

There is no longer any serious debate about whether violence in the media is a legitimate problem. Science and common sense judgments of parents agree. As stated in a year-long effort, funded by the cable TV industry, and involving Jane Brown of UNC [the University of North Carolina School of Journalism and Mass Communications], “. . . there are substantial risks of harmful effects from viewing violence throughout the television environment.”²¹

While the question of whether the viewing of violence on television increases the likelihood of violent acts is a valid and pressing one, this Article explores a different, but related issue: how does viewing violent crime on television affect public perception of crime, fear of crime, and personal choices when addressing society’s response to crime?

Research in the field has uncovered four salient points, which are explored in the following Sections. First, television coverage of vio-

18. See Jerry L. Colclazier, *Therapeutic Jurisprudence: The Nuts and Bolts of Drug Courts in Oklahoma*, 71 OKLA. B.J. 1985, 1985 (2000).

19. Brian Lowry, Variety.com, <http://weblogs.variety.com/bltv> (Feb. 24, 2009, 13:02 EST); see also Posting of Faiz Shakir to Think Progress, <http://thinkprogress.org> (Feb. 25, 2009 17:10 EST).

20. Scott Stossel, *The Man Who Counts the Killings*, ATLANTIC MONTHLY, May 1997, at 86, 90.

21. Reed Hundt, Chairman, Fed. Comm’n Comm’n, Television, Kids, Indecency, Violence and the Public Interest, Address at the Duke Law Journal’s 27th Annual Administrative Law Conference (Feb. 9, 1996), available at <http://www.fcc.gov/Speeches/Hundt/spreh605.txt>.

lent crime has no relation to the actual rate of crime.²² Second, murder is the crime reported most often even though it is the crime committed least frequently.²³ Third, homicide between strangers and interracial homicide are covered most frequently even though those are the least common types of homicide.²⁴ Finally, people who watch local television news are more likely to fear crime—both on a personal and societal level.²⁵

A. *Television Coverage and the Crime Rate*

Crime coverage increased dramatically during the 1990s while crime rates were falling.²⁶ The dramatic increase of crime coverage is directly related to economics. Reporting local crime is cheap. As networks, newspaper companies, and magazine companies cut journalists across the board, more media product must be made with less cash. Thus, making reporting on local crime, with “stand-ups” outside an engaging courtroom drama or burning building, is a good investment for the media companies. Reporting remotely, or through the use of “citizen journalists,” is cheaper still and, therefore, even more appealing.

B. *The Media's Disproportionate Reporting of Murder*

Crime coverage typically focuses on violent crime, especially homicides, and particularly homicides among strangers. What is even more disturbing to those concerned over the tension between our media and a fair criminal justice system is the *racialization* of media coverage.²⁷ In most media markets, crime news is reported with a predictable script,²⁸ which involves describing the usually violent crime over images of the victim and family at or near the crime scene. Franklin Gilliam, dean of the UCLA School of Public Affairs and professor of political science, explains, “The prevalence of crime in the media has led to a predictable crime narrative or ‘script’ that includes two core elements: crime is violent and perpetrators of crime are non-white males. That’s a kind of shorthand that people rely on to make sense

22. See *infra* note 26 and accompanying text.

23. See *infra* notes 27–29 and accompanying text.

24. See *infra* notes 30–37 and accompanying text.

25. See *infra* notes 38–42 and accompanying text.

26. See Stossel, *supra* note 20, at 92.

27. RACE TO EXECUTION, *supra* note 6 (quoting Bryan Stevenson).

28. See Franklin D. Gilliam, Jr., Nicholas A. Valentino & Matthew N. Beckmann, *Where You Live and What You Watch: The Impact of Racial Proximity and Local Television News on Attitudes About Race and Crime*, 55 POL. RES. Q. 755 (2002).

of the world.”²⁹ When possible, the typical television news crime “script” continues with visuals of the crime suspect. What viewers learn about suspects is generally limited to the obvious visual attributes, such as gender and race, or ethnicity: “the suspect is a twenty-year-old black male,” and so on.

C. *The Types of Homicides Reported*

While there is some evidence that a disproportionate number of suspects on the news are people of color, particularly African Americans, confirmed data shows that whites are over-represented as victims of violent crime and non-whites are underrepresented as victims of crime.³⁰ “Crimes that get covered the most are crimes in which the victim is white,” says Renee Ferguson, an investigative reporter for Chicago’s NBC 5 News.³¹ “The media tends to reinforce—at great profit—an unconscious assumption that white, middle-class people are at great risk of being violently attacked by people of color,” Ferguson continues.³²

When white people are portrayed as perpetrators of crime, they are disproportionately shown committing non-violent crime. In contrast, black suspects on television news, disproportionately portrayed as perpetrators of violent crime, are less likely to be identified by name and are more likely to be depicted physically restrained by police and handcuffs. Harvard Law School’s Charles J. Ogletree, Jr. agrees: “You see drugs, you see police, you see sirens, you see handcuffs,” he says, “and you see people in prison and in jails.”³³ Those people are largely African American.

In addition, minority individuals are less frequently shown in positions of authority; for example, television news under-represents the presence of African Americans in the police force. In Hartford, Connecticut, which has a ninety percent “black and brown” population, local news viewers see a cast of virtually all white anchors (ninety-nine percent) and 70.8% white reporters.³⁴ Instead of thoughtful coverage looking at the root causes and potential solutions to the miseries caused by crime in the city, news coverage was primarily sensational

29. Juror Number Six, *supra* note 7; see also Gilliam et al., *supra* note 28, at 758.

30. Juror Number Six, *supra* note 7.

31. *Id.*

32. *Id.*

33. *Id.* Charles Ogletree, Jr. is director of Harvard University’s Charles Hamilton Houston Institute for Race and Justice.

34. FRANKLIN D. GILLIAM, JR. & GEORGE WHITE, UNBALANCED FRAMES: CONTENT ANALYSIS FOR LOCAL TELEVISION NEWS IN HARTFORD, <http://www.c3.ucla.edu/research-reports/research/unbalanced-frames> (last visited Apr. 20, 2009).

breaking stories with “episodic narratives.”³⁵ While “yellow journalism” and the dictum that “if it bleeds, it leads,”³⁶ have been around for a long time, the scale of reporting and the unending use of images with mostly dark people being arrested and put through “perp walks” have escalated.³⁷

D. People Who Watch Television News Are More Likely to Fear Crime

The accumulation of this imagery perpetuates the idea of minorities as dangerous, out-of-control, and filled with rage. Media portrayals have established the connection between race and crime in the public mind, depicting the poor as undeserving and responsible for their own circumstances.³⁸ According to criminal defense attorney Andrea Lyon:

The face of crime for most people is a dark face. Every study tells us that people simply view—African Americans in particular—but Hispanics as well, as more dangerous. And so I’m going to be dealing with a jury whether they want to or not, whether they are conscious of it or not, who are coming in saying “probably guilty,” looking at [a black defendant] and saying, “definitely probably guilty.”³⁹

Three-quarters of the American public say they form their opinions about crime through what they see or read in the news.⁴⁰ When researchers tested subjects’ opinions on a range of policy issues before and after viewing televised crime news segments, white subjects exposed to either a white victim or a non-white perpetrator in the news

35. *Id.*

36. See Ronald J. Krotoszynski, Jr. & A. Richard M. Blaiklock, *Enhancing the Spectrum: Media Power, Democracy, and the Marketplace of Ideas*, 2000 U. ILL. L. REV. 813.

37. *Id.*

38. Barry C. Feld, *Race, Politics, and Juvenile Justice: The Warren Court and the Conservative “Backlash,”* 87 MINN. L. REV. 1447, 1544–45 (2003). Feld explains:

Mass media portrayals and political rhetoric have established in the public mind the connection between race and youth crime. Increasingly, political discourse and public policy depict the poor as undeserving and responsible for their own circumstances. Politicians exploit these racially-tinged perceptions with pledges to “get tough” on youth crime, which the public understands as a “code word” for harsher treatment of young black males.

Id. at 1573–74.

39. Travis L. Dixon & Daniel Linz, *Race and the Misrepresentation of Victimization on Local Television News*, 27 COMM. RES. 547 (2000); see also *All Prejudice Isn’t Created Equal; Whites Distribute It Unequally to Minorities*, SCI. DAILY, Feb. 25, 2009, <http://www.sciencedaily.com/releases/2009/02/090225132241.htm>.

40. Press Release, Hilary O. Shelton, Director, Washington Bureau, NAACP, “Off Balance: Youth, Race, and Crime in the News” (April 10, 2001), <http://www.buildingblocksforyouth.org/media/naacp.html>.

segment showed an increase in their support for harsh punishments in response to crime.⁴¹ The potential implications for jury outcomes is disturbing: “Do you really want that decision [about life and death] to be influenced by what a juror saw on cable TV last night?”⁴²

IV. THE O.J. SIMPSON EFFECT

The O.J. Simpson trial in 1995 marked the beginning of an increase in reality crime shows, courtroom and crime analysis shows, and entire cable networks that base their programming on trials. “The O.J. Simpson case created a whole frenzy about crime.”⁴³ It was a case that was immediately overwhelmed with gavel-to-gavel coverage—at midnight or at six o’clock in the morning you could hear some new little wrinkle.⁴⁴ “Before O.J. Simpson, there was no Greta Van Susteren and *On the Record*,” says Charles Ogletree, Jr.⁴⁵ “Before O.J. Simpson, there was no Nancy Grace. Before O.J. Simpson, we didn’t have these programs that can around-the-clock cover crime and news the way that [they do].”⁴⁶ According to the U.S.C. Annenberg Center for Justice and Journalism director, Steve Montiel and senior fellow, Joe Domanick, the O.J. Simpson trial was a watershed moment: “This was the ultimate crime story—you had race, you had violence, you had sex, you had sports—it was all, it all came together in one case.”⁴⁷

The case was caught in the crosshairs of technological, industrial, cultural, and Internet change. News had become focused on the cult of the celebrity. Dozens of then fledgling cable networks had to fill twenty-four hours of programming on tiny budgets. But also, the fact that the O.J. Simpson case involved a cross-racial crime, allegedly committed by an African-American man against a “blonde beauty,” was undeniably relevant.⁴⁸ “The media sensationalizes homicides and prioritizes them in terms of outrage and threat, which is often race-driven. Not all murders are given equal media coverage. Same-race homicide is far more common but interracial homicide is what makes

41. Franklin D. Gilliam & Shanto Lyengar, *Prime Suspects: The Corrosive Influence of Local Television* (UCLA Ctr. for Comm’n & Cmty, Paper No. 001, 2000), <http://repositories.edlib.org/ccf/media/001>.

42. Juror Number Six, *supra* note 7 (quoting Renee Ferguson).

43. *Id.*

44. *Id.*

45. *Id.*; see also Frontline, The O.J. Verdict: Rating the Media’s Performance, PBS, <http://www.pbs.org/wgbh/pages/frontline/oj/themes/media.html> (last visited May 31, 2009); Frontline, The O.J. Verdict: Interview—Charles J. Ogletree Jr., PBS, <http://www.pbs.org/wgbh/pages/frontline/oj/interviews/ogletree.html> (last visited May 31, 2009).

46. Juror Number Six, *supra* note 7.

47. *Id.*

48. *Id.*

the news. This media pressure makes death penalty decisions more political than ever.”⁴⁹

Finally, the O.J. Simpson trial occurred at a moment of intense consolidation of the media industries, which tightened into the hands of only ten major companies.⁵⁰ Profits made on the cult of personality became extremely helpful to the companies who held ninety percent of the world’s media immediately prior to the onslaught of the Internet. When a star could be endlessly followed and covered—from fashion magazines to movie and television programs, from cable and network news coverage to theme parks, from gossip columns to magazine stands—profits increased for the owners of studios, publishers, newspapers, and magazines. Stars became a replacement for content-oriented news and analysis. From truTV to the emergence of Marcia Clark as a television personality, the long-term effects of the O.J. Simpson trial and its television coverage are now an entrenched part of our media landscape.

V. TELEVISION DRAMA AND FRAMING IN CRIME MEDIA

Television dramas are a staple of America’s “couch potato” suburban culture. In 2008, there were 370 hours of crime programming broadcast in a single week.⁵¹ Crime shows such as *CSI*, *Law & Order*, and *Life* can be seen seven days a week, twenty-four hours a day on a variety of cable, syndication, and network television broadcasts throughout the United States.

This billion-dollar crime media industry has had an insidious effect on potential jurors, voters and policy makers, with both positive and negative impacts for human beings sitting in the defendant’s chair.⁵² *CSI* (Crime Scene Investigation) has been so successful that a slate of television shows have spun off, including *CSI: New York* and *CSI: Miami*. The newly coined phrase “the *CSI* Effect” is used to describe the considerable influence that crime dramas have on jurors.⁵³ With the popularity of *CSI* and crime dramas like it, lawyers have felt com-

49. Interview with Charles J. Ogletree, Jr., Director, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School (Jan. 21, 2008).

50. Tux Turkel, *Media Consolidation a Threat, News Exec Says*, PORTLAND PRESS HERALD, Dec. 2, 2004, available at <http://www.c3.ucla.edu/research-reports/media-ownership/media-consolidation-a-threat-news-exec-says>.

51. Juror Number Six, *supra* note 7.

52. See Tom R. Tyler, *Is the CSI Effect Good Science?*, 115 YALE L.J. POCKET PART 73 (2006), <http://yalelawjournal.org/2006/02/tyler.html>.

53. Steven M. Smith, Marc W. Patry & Veronica Stinson, *Exploring the CSI Effect: Is It Real? If So, What Is It?*, in PROCEEDINGS OF THE NORTH AMERICAN CORRECTIONAL & CRIMINAL JUSTICE PSYCHOLOGY CONFERENCE 81, 81 (2008).

pelled to become better versed in forensic evidence in order to sway juries,⁵⁴ and judges have given instruction to juries that a case is *not* CSI, with emphasis on perfect scientific proof.⁵⁵ This effect has frustrated prosecutors and judges, and has occasionally been of use to the all-but-forgotten side of courtroom dramas: the defense.

On the one hand, jury expectations have forced prosecutors and police to use more and better evidence. On the other hand, juries watching these shows come away with a reinforced perception that America's justice system works fairly and accurately. Despite these perceptions, there is no DNA evidence in ninety-five percent of murder cases.⁵⁶ Although both prosecutors and defense attorneys complain about the CSI Effect, the message that viewers take away is that our legal system works.

At the same time, CSI has led to better funding for criminology. After actor William Peterson, who plays CSI's key character, testified in support of funding for crime scene laboratories, the Senate allotted \$482 million of federal funding for crime labs.⁵⁷ Additionally, high schools and colleges have incorporated forensics into chemistry courses,⁵⁸ university law professors show scenes from the series, and some top forensics labs are now offering courses to the public.⁵⁹

While the scale of detailed statistical research on the effects of viewing crime drama is more limited than research on local news, it is likely that these programs have both positive and negative effects. The viewer demographic of these programs is skewed towards older, white suburban dwellers that are most likely to be jury members. The viewing of crime dramas can lead to beliefs that criminal investigation is scientific and done by dedicated, talented individuals in gleaming laboratories with time and resources to devote to each and every case.

Beyond the obsession with forensics, television crime dramas distort reality in other ways. In recent years, there has been and almost a complete dearth of positive characters on the defense side of the courtroom. Despite our supposed devotion to a right to a fair trial

54. See Tyler, *supra* note 52, at 73.

55. MARICOPA COUNTY ATTORNEY'S OFFICE, CSI: MARICOPA COUNTY: THE CSI EFFECT AND ITS REAL-LIFE IMPACT ON JUSTICE (June 30, 2005), available at http://www.ce9.uscourts.gov/jc2008/references/csi/CSI_Effect_report.pdf; Simon Cole & Rachel Dioso-Villa, *CSI and Its Effects: Media, Juries and the Burden of Proof*, 41 NEW ENG. L. REV. 435 (2007).

56. RACE TO EXECUTION, *supra* note 6 (interviewing Steven Bright, Southern Center for Human Rights).

57. G. Heuett, *Senate Passes the National Forensic Science Improvement Act*, 4 FORENSIC ECHO 12 (2000).

58. Carlene Hemplel, *TV's WhoDunit Effect*, BOSTON GLOBE, Feb. 9, 2003, Magazine, at 13.

59. See Larry C. Sontag, *The CSI Effect? The Albuquerque Police Crime Lab Responds*, FORENSIC MAG., Feb. 5, 2009, available at <http://www.forensicmag.com/articles.asp?pid=96>.

and the presumption of innocence, defense lawyers on television today are generally portrayed as sleazy characters out to put dangerous criminals back on the street. Where are the great defenders of the past: Perry Mason, E.G. Marshall in *The Defenders*, Matlock, or *Judd for the Defense*? They are conspicuously absent. Why do viewers seldom see police, investigators, or prosecutors make mistakes? When viewers watch crime television, they see guilty people arrested, charged, and punished for their bad deeds in comfortable one-hour time blocks. One of the few studies on the effects of crime dramas showed that viewers exposed to a particular episode of *Law & Order* were more likely to increase their support for the death penalty than the control group.⁶⁰

Much of what we believe about our world we learn through the media. Americans believe that we live in a dangerous world where bad things happen, a perception that, at best, has been very profitable for the media. At worst, it has generated a complicity by media companies to push that belief into the hearts and minds of their viewers.⁶¹ On "crime-time," primetime television, life is filled with the immediate threat of harm and menace, much more so than what we actually experience.⁶²

But viewers of crime dramas also may receive the impression that the world is fairer than it actually is. Primetime dramas "teach" us that there are significant numbers of black judges, prosecutors, and jurors.⁶³ This gives the perception that "we have arrived," that the courts are fair and that our justice system is working.⁶⁴ In fact, as of 1994, 97.5% of district attorneys in states that apply the death penalty were white and male,⁶⁵ while African Americans made up only 3.9% of all lawyers in death penalty cases.⁶⁶

Thus, crime dramas distract, entertain, and excite audiences while sending several key messages: we live in a dangerous world, yet we have a fair and integrated justice system, where forensics are carefully practiced by police, and where prosecutors always tell the truth and

60. See Michael D. Slater, Donna Rouner, & Marilee Long, *Television Dramas and Support for Controversial Public Policies: Effects and Mechanisms*, 56 J. COMM. 235, 249 (2006).

61. See *supra* note 3 and accompanying text.

62. See R. Lance Holbert, Dhavan V. Shah & Nojin Kwak, *Fear, Authority, and Justice: Crime-Related TV Viewing and Endorsements of Capital Punishment and Gun Ownership*, 81 JOURNALISM & MASS COMM. Q. 343 (2004).

63. Juror Number Six, *supra* note 7.

64. *Id.*

65. Death Penalty and Race: Who Lives and Who Dies, <http://www.xs4all.nl/~tank/spg/mumia-eu/countr/00-06-07deathpen.htm> (last visited Feb. 16, 2009).

66. Interview with Charles J. Ogletree, Jr. (Jan. 23, 2008).

seek justice against the guilty man.⁶⁷ This idealized media world of criminal justice allows us to both see the violence and perversion of normal behaviors that intrigue us and generate profit for media conglomerates. At the same time, the media world justifies these guilty pleasures by a fair and just ending brought about by our heroes in the justice system who find and punish the guilty without regard to race, gender, or class.⁶⁸

VI. MEDIA, PERCEPTION, AND JURY OUTCOMES

Many Americans, and thus, many jury members, lack firsthand experience both with people of other races and with crime. The persistence of de facto racial segregation in most communities in the United States means that impersonal influences such as the media are likely to play a significant role in the development of racial attitudes. As Lee Sigelman and Susan Welch point out, "Lacking such firsthand information, whites must base their responses on whatever other information they may have at their disposal."⁶⁹

Similarly, most people have not been the victims of violent crime, and they do not have contact with people who have arrest records, much less a history of violent crime. But a steady stream of mass media information bombards them. Juries' perceptions of the people in the defendant's chair are mediated through this exposure, which "may serve as a surrogate for more direct expressions or solicitations of public opinion. In this way, media attentiveness to political issues may provide mass publics with an accessible, though fallible, means of monitoring their political environment."⁷⁰

VII. THE INTERNET: FRAMING HUMAN RIGHTS IN "CRIME MEDIA"

The impact of the Internet with regard to human rights and other political issues is just beginning to be measured for the unique and nuanced influence it exerts. We have no long-term impact assessments, and by the time we will have them, whole new technologies in media messaging will likely exist. However, the impact of the Internet

67. RACE TO EXECUTION, *supra* note 6 (interviewing Bryan Stevenson).

68. Mary Beth Oliver, *Race and Crime in the News: Whites' Identification and Misidentification of Violent and Nonviolent Criminal Suspects*, 4 MEDIA PSYCHOL. 137 (2002).

69. Lee Sigelman, & Susan Welch, *The Contact Hypothesis Revisited: Black-White Interaction and Positive Racial Attitudes*, 71 SOC. FORCES 781, 783 (1993).

70. Gilliam et al., *supra* note 28, at 757 (quoting Diana C. Mutz & Joe Soss, *Reading Public Opinion: The Influence of News Coverage on Perceptions of Public Sentiment*, 61 PUB. OPINION Q. 431, 432 (1997)).

is unmistakable. News leaks are instantly consumed around the globe, presidential campaigns are waged online, and crime and punishment move into the vast boutiques of social network interpretations. Previously, people countered only what they heard on the news with what they experienced in real social groups. Today, virtual communities redefine personal community, while simultaneously expanding the reach of social contact and potential impact exponentially. If a young woman in the pre-Internet age saw an increase in “stranger-danger” rape cases in Philadelphia on the news, she would call and talk to her girlfriends about what had happened. In her home and work life and through discrete conversation at the water cooler, she may have found that the news did not accurately represent the whole truth for her social world.

But today, that same young professional may post a blog about her questions or concerns about violent crime in her area on Facebook, email, and multiple message outlets. She will be inundated with almost immediate messages from a range of contacts around the world. Yet, because she does not know these women personally, she may not feel comforted by their individual experiences. Because they do not constitute a “real” community, she may not enjoy any “real” protection from the perception of risk. This breaks the strength of the Social Comparison Theory⁷¹ in our culture, continuing to remove methods this hypothetical young woman, or anyone else, has to understand fearful news in relation to their own world.

News media framing and its influence on viewers, both as potential jurors and as voters, are deeply related to positioning and packaging information to effectively reach new Netizens.⁷² Nowhere was this interplay between framing and outcomes clearer than in the 2008 United States presidential election. According to media critic Jeff Cohen, “[o]f all the factors contributing to Obama’s victory—luck, economic crisis, Bush, Palin—a major factor is now so second-nature to us that we may overlook its transformative impact since just four years ago: the Internet and the progressive online boom.”⁷³

While the 2008 election was the first presidential campaign waged as fully in the Internet as it was within the traditional media, it was also by necessity the first open airing of current racial attitudes by the media in decades, simply because President Obama is African Ameri-

71. See Romer et al., *supra* note 3, at 90–91.

72. Juror Number Six, *supra* note 7 (interviewing Jeff Palfrey, Harvard Law School, Berkman Center for Internet and Society).

73. Jeff Cohen, *Big Election Winner: Indy Media*, HUFFINGTON POST, Nov. 5, 2008, http://www.huffingtonpost.com/jeff-cohen/big-election-winner-indy_b_141376.html.

can. The reticence President Obama had for directly addressing race—with the exception of his one major speech on the subject, which he only gave when his hand was forced—reveals just how negative “race” is as an American conversation.

Grassroots Internet activism—popularly referred to as “net roots”⁷⁴—has also emerged as a powerful social force, which is beginning to parallel the framing power of the media. One prominent example from 2006 demonstrates the possible positive impact of the Internet on the convergence of race, crime, and media. In the case of the “Jena Six,” a group of six black high school youths were initially charged with attempted second-degree murder (the charge was later reduced) for the beating of a white student.⁷⁵ Critics of the case considered the charges excessive and racially motivated.⁷⁶ According to Charles Ogletree, the “Jena Six” was an organic case that the mainstream media initially ignored.⁷⁷ Ogletree describes how “young people, in particular, started blogging about it—black urban kids started reading about it.”⁷⁸ Ogletree continues, “It wasn’t the great leaders who brought everybody together. It was young people who said, ‘that’s something going on in America. I’ve never even heard of Jena, Louisiana. Let’s go down there. This is on our watch. This is our time.’”⁷⁹

Charles Nesson explains how the interest formed and nourished over the Internet eventually trickled up to mainstream news outlets.⁸⁰ According to Nesson, “The Net can be the pusher of a story . . . it becomes easier to stimulate the interest of the traditional media in a story that you’re trying to promote.”⁸¹ Citizen journalism is certainly not a new phenomenon. In the past, it had tremendous influence—consider I.F. Stone Weekly during the 1960s. With the relatively recent innovations in desktop publishing, however, blogs and online outlets for news and information have been steadily rising in influence.⁸² Today many progressive websites such as Talking Points Memo, Daily Kos, and The Real News, and conservative websites such as The

74. Juror Number Six, *supra* note 7 (interviewing Charles Nesson, Harvard Law School, Berkman Center for Internet and Society).

75. *Teenager in Jena Six Pleads Guilty to Lesser Charge*, N.Y. TIMES, Dec. 4, 2007, at A24.

76. *Thousands “March For Justice” in Jena, Court Orders Hearing on Teen*, CNN, Sept. 20, 2007, <http://www.cnn.com/2007/US/law/09/20/jena.six.index.html>.

77. Juror Number Six, *supra* note 7.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* (interviewing Charles Nesson, Harvard Law School, Berkman Institute for Internet and Society).

Drudge Report and Little Green Footballs often wield considerable influence in framing major stories covered by the traditional outlets. How the Internet will influence the state of media and crime is still largely unknown. Two authors have commented:

Online public opinion plays an important role in transforming the original local event into a nationally prominent issue. It also exerts a significant frame-building impact on subsequent media reports but only in the early stage of coverage. However, the media are not passive in this two-way process and adapt online frames as necessary. Although media coverage is the primary source of information for netizens, it does not set frames for online discourse.⁸³

Thus, the Internet is a moving target; on the one hand it depersonalizes the community in ways that lend to acceptance of stereotypes, while, on the other hand, it enlarges the very notion and definition of community exponentially. Online communities profess to be interested in "everything," yet tend to disparage actual activity that is non-virtual. One of the fellows at the Harvard Center for Internet and Society exclaimed that, "she knew all about progressive movement activism from the 'Net,' though when asked if she had actually attended any gathering, demonstration or event on behalf of any issue, she admitted that she 'hadn't yet.'"⁸⁴

The Internet is, among other things, a major distribution model for network, radio, advertising, cable news, music, movies, and now, presidential campaigns. Framing messages to traditional audiences in older formats is a quickly fading paradigm, as everything from direct mail campaigns to presidential organizing and fundraising are dramatically changing on the ground. The promise of a more democratized media world defies the logic of the first hundred years of communications technology—jail now owned by ten corporations.

VIII. SOLUTIONS

It is not a stretch to conclude that all major forms of media have been active participants in cashing in on fear of crime, regardless of whether or not this has been conscious. Media corporations, editorial staff, and reporters have contributed to four main perceptions: (1) that violent crime is on the rise and white people are most often the victims; (2) that the perpetrators are usually men of color; (3) that we have "fixed" inequities in the justice system and police, prosecutors,

83. Yuqiong Zhou & Patricia Moy, *Parsing Framing Processes: The Interplay Between Online Public Opinion and Media Coverage*, 57 J. COMM. 79, 79 (2007).

84. John Palfrey, Rachel Lyon & David Harris, *Work-in-Progress Screening and Panel Discussion of Juror Number Six*, Berkman Center for Internet & Society, Harvard University (Mar. 15, 2008).

and judges catch the right person and are fair to defendants; and (4) that harsh punishment in laws and in courtrooms will protect “us” from harm.

Conversely, we also know that especially in these drastic economic times, the cost to imprison millions of people is often twenty percent or more of a state’s budget, that the “three strikes you’re out” laws have added tens of thousands of non-violent offenders to the long-term prison system, “warehousing” bicycle thieves together with murderers, and that minority communities have been decimated by having fifty percent of their male population between the ages of eighteen and thirty-five within the criminal justice system.⁸⁵

Clearly, the justice system as we know it must change and the best candidates to help “change the frame” on the way we look at crime and punishment are the media. Frank Baumgartner has demonstrated that the changing media “frame” about the environment has led to a mainline, mainstream acceptance of the idea, that it’s good to “be green.”⁸⁶ This is not an easy process: many parties encouraged the long-held view that environmentalists were anti-business, and would save a forest to save one spotted owl, ignoring the needs of working men, etc. This was a long, slow process that happened on the ground, within community organizations and mail campaigns from NRDC, The Audubon Society, Greenpeace, among many others, as well as in the media. Filmmakers, journalists, and many others began covering the media in everything from documentaries, feature films, in-depth news coverage on NPR, *Nightline*, *60 Minutes*, and almost from the inception of a public Internet, on the World Wide Web.⁸⁷ Particularly since Hurricane Katrina in 2005, there has been an upsurge sweeping acceptance by virtually every major corporation, university, and government office, that we must “go green.” Baumgartner argues that what was done in the media for the environment can be done in the media to deconstruct and eliminate the death penalty in America.⁸⁸

Deconstructing the many complex issues surrounding fear, crime, race and punishment in the media will not happen overnight, but the moment of need has come, creating an opportunity: State and even federal government will by necessity need to look for other solutions than more, bigger, super-max prisons to help solve deep financial cri-

85. JOE DOMANICK, *CRUEL JUSTICE: THREE STRIKES AND THE POLITICS OF CRIME IN AMERICA’S GOLDEN STATE* 189, 205, 254 (2004).

86. See Frank Baumgartner, *Punctuated Equilibrium Theory and Environmental Policy*, in *PUNCTUATED EQUILIBRIUM AND THE DYNAMICS OF U.S. ENVIRONMENTAL POLICY* 24, 25–29 (Robert C. Repetto ed., 2006).

87. RACE TO EXECUTION, *supra* note 6 (interviewing Frank Baumgartner).

88. *Id.*

sis. With an African American in the White House, the "issue" of having a skewed, racialized justice system is more likely to be addressed, or at least not dismissed as "the race card." The other opportunity to "change the frame" is the state of media itself: newsrooms are slashing jobs, and citizen journalists are on the rise and will stay that way by economic necessity. Capturing moments of questionable practices and publishing those stories on the Internet moves the mainstream media to provide greater coverage on issues they once considered "fringe."

Finally, the will to make the change—to let go of fear as the only common ground between us—will need to become a greater priority of writers, producers, editorial staff, and network and studio executives. We will need to change based on the combination of financial needs, changing demographics, and simple good will toward others.